

REMARKS

As a preliminary matter, Applicants would like to point out that two requests for a corrected filing receipt have been made in this application. The requests seek to make the following correction of the first named inventor's name: "Rose Ramon BOTELLA MESA" should read –Jose Ramon BOTELLA MESA—. In the pending office action, the first named inventor's name is still incorrect. Accordingly, Applicants' respectfully request that this change be made.

In the pending Action, the Examiner acknowledges receipt of a new sequence listing and CRF for this application on August 29, 2001. However, the Examiner states that the transmittal accompanying the new sequence listing and CRF failed to state that the new sequence listing and CRF contain no new matter. Accordingly, please find attached to this application a copy of the new sequence listing, CRF, and a transmittal stating that the new sequence listing and CRF contain no new matter and the contents of the sequence listing and CRF are the same as requested by the Examiner.

The Examiner has rejected claims 11-14 as being in improper form "because a multiple dependent claim must refer to the claim numbers in the alternative." Claim 11 has been amended to refer to claims in the alternative. Accordingly, this rejection is now moot.

Claims 1, 7, 9, 11-15, and 19-24 stand rejected under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner states that there is no support for 70% identity to SEQ ID NO:3. This rejection is respectfully traversed.

On page 12, lines 10-16 of the second substitute specification 70%, 80%, 90% and 95% are listed as alternative percentages for comparing nucleotide sequences. This passage also appears in the originally specification in the paragraph bridging pages 12 and 13 of the specification. This passage is not limited to a specific nucleotide sequence, but rather applies to all of the nucleotide sequences recited in the specification. Since the claimed similarity between nucleotide sequences is

expressly recited in the specification as filed, and thus provides an express written description of the claims, this rejection should be withdrawn.

Claims 1, 7, 9, 11-15, and 19-24 also stand rejected under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement because the Examiner states that the claimed genus of nucleotide sequences is not sufficiently disclosed. Specifically, the Examiner states that applicants have not described a sufficient number of representatives of the claimed genus and/or disclosed the defining structural and functional characteristics of the genus. The Examiner further states that the structural requirements of sequences that encodes a promoter that functions to direct expression of ACC and that is inducible in response to physical stimulation cannot be envisioned. Independent claims 1, 7, and 15 have been amended to include specific structural requirements for all of the claimed promoters as suggested by the Examiner. Further, claim 1 has been amended to delete reference to all promoters that direct expression of ACC and that are inducible in response to physical stimulation. Accordingly, this rejection should be withdrawn.

Claims 1, 7, 9, 11-15, and 19-24 stand rejected under 35 USC 112, second paragraph, as being indefinite. With respect to claims 1 and 7 the Examiner states that it is unclear what sequences are complementary sequences and what sequences define the promoter. Claims 1 and 7 have been amended to clearly recite that any of the sequences recited in (i)-(v) define the promoter and to identify the complementary sequences.

With respect to claim 15, the Examiner states that the metes and bounds of the term “derived from” are unclear. Claim 15 has been amended to recite that the claimed promoter is “obtained from” the defined sequences as suggested by the Examiner. Accordingly, this rejection is now moot.

Claim 15 stands rejected under 35 USC 103(a) as being anticipated by Knox. This rejection is respectfully traversed. As recited above, claim 15 has been amended to specify that the claimed

promoter is "obtained from" the defined sequences. Knox fails to disclose any promoter obtained from the sequences defined in claim 15. Accordingly, this rejection should be withdrawn.

For the foregoing reasons a notice of allowance allowing claims 1, 7, 9, and 11-25 is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Attorney Docket No. **229752001300**.

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Respectfully submitted,

By 

Jonathan Bockman

Registration No.: 45,640

MORRISON & FOERSTER LLP

1650 Tysons Blvd, Suite 300

McLean, Virginia 22102

(703) 760-7769